

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

AARON K. RILEY,

Petitioner,

v.

**CIVIL ACTION NO. 2:06 CV 119
CRIMINAL ACTION NO. 2:04 CR 11
(Maxwell)**

UNITED STATES OF AMERICA,

Respondent.

ORDER

On December 6, 2006, *pro se* Petitioner Aaron K. Riley filed a Petition Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody.

The case was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation in accordance with Rule 83.15 of the Local Rules of Prisoner Litigation Procedure.

On January 18, 2007, the Petitioner filed a Motion To Withdraw Petition § 2255 Without Prejudice, wherein he requested that his § 2255 Motion be withdrawn, without prejudice, in order that his direct appeal to the United States Court of Appeals for the Fourth Circuit might proceed.

On January 22, 2007, United States Magistrate Judge John S. Kaull issued a Report And Recommendation wherein he recommended that the Petitioner's Petition Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody be denied and dismissed without prejudice and that his Motion To

Withdraw Petition § 2255 Without Prejudice be granted.

In his Report And Recommendation, Magistrate Judge Kaull provided the Petitioner with ten (10) days from the date he was served with a copy of said Report And Recommendation in which to file objections thereto and advised the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation. The Court's review of the docket in the above-styled action reveals that no objections to Magistrate Judge Kaull's January 22, 2007, Report And Recommendation have been filed by the Petitioner and that this matter is now ripe for review.

Upon consideration of said Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled action on January 22, 2007 (Docket No. 111), be, and the same is hereby, **ACCEPTED** in totality. Consistent with said Report And Recommendation, it is, accordingly,

ORDERED that the Petitioner's Motion To Withdraw Petition § 2255 Without Prejudice (Docket No. 110) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Petition Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody (Docket No. 102) be, and

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

the same is hereby, **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner.

ENTER: March 22, 2007

/S/ Robert E. Maxwell
United States District Judge